

DECISION



19901
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203539

DATE: October 28, 1981

MATTER OF: Alliance Properties, Inc.

DIGEST:

1. Protest that evaluation was improper, filed within 10 working days from the time the protester was informed by the agency that another bidder had been awarded the contract, is timely even though protester could possibly have discovered grounds of protest earlier since doubts as to timeliness are resolved in favor of protester and timeliness is measured from the time protester learns of agency action or intended action which protester believes to be inimical to its interests.
2. Where award date was unavoidably delayed so as to shorten contract performance period by one month, award to bidder evaluated as low under performance period specified in solicitation is not improper even though awardee would not be low under evaluation based on shorter actual performance period, since competition was fair, prices had been exposed and probable cost of resolicitation would exceed difference in prices bid by protester and awardee.

Alliance Properties, Inc. protests the award of a contract to The McMillan Corporation by the U.S. Air Force at Wright-Patterson Air Force Base under invitation for bids (IFB) No. F33601-81-B-0022. The solicitation called for bids to provide maintenance for military family housing. Alliance contends the award to McMillan requires the Air Force to pay more than it would have to pay Alliance for the same services. For reasons discussed below, this protest is denied.

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When the solicitation was issued on March 3, the agency intended to make award by May 1 and to have the contractor start work on June 1. The original bid opening date of April 2 was extended to April 10 by an amendment dated March 30. The solicitation called for fixed prices for a four-month base period in fiscal year 1981, for each of two one-year options and for a third option of six months for a total of 34 months. The solicitation stated that bids would be evaluated by adding the total price of all options to the price for the basic quantity and that award would be made to the responsible bidder whose bid, conforming to the solicitation, would be most advantageous to the Government, price and other factors considered. The solicitation also provided that the contract period would be from June 1 or date of receipt of the executed contract, whichever was later.

Because of a delay in conducting a preaward survey of McMillan, the contract was not awarded to that firm until May 27. Since the contract required a one-month phase-in period, this made it impossible for McMillan to start work until July 1, thus eliminating one month from the planned base performance period of four months. Although McMillan's bid was low under the specified 34-month evaluation period, all parties agree that if the evaluation were based on a three-month base period and a 33-month total period reflecting the actual performance time caused by the delay in the award, Alliance would be low. McMillan's bid was evaluated at \$965,764.66 for the 34-month period; \$3,404.54 below Alliance's bid for that period. Alliance's bid would have been evaluated at \$937,319.18 were the 33-month period used; \$699.48 under McMillan's bid for the same period.

Alliance contends that since the award did not include the month of June as originally planned, its bid, as evaluated using the shortened three month base period and 33-month total, is low and should have been accepted. The Air Force maintains that since the solicitation did not provide for an evaluation on any basis other than the 34-month period, its only alternative would have been to reject the bids and resolicit. In view of the cost of resolicitation, which would include the cost of extending the incumbent's contract, and considering the fact that the prices had been exposed and that there was no great difference between them, the Air Force did not consider this alternative desirable or feasible. The Air Force also

contends Alliance's protest is untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981), because it was submitted four days after award and more than ten days after Alliance should have known (May 1) that the actual period of performance would be less than 34 months.

We believe Alliance's protest, which was received by this Office within three working days of that firm's receipt of notification of award, should be considered timely. The record is not clear as to what transpired during the evaluation period. Alliance did submit a letter dated May 13 which set forth its view that it considered itself the low bidder under the 33-month evaluation scheme. The Air Force never provided Alliance a written answer to the letter but contends that during several telephone calls it informed Alliance that that firm's analysis had not been accepted and the evaluation would be made on the basis of 34 months. Alliance, however, maintains it was told the Air Force was checking its mathematics and that the implications of Alliance's letter were unclear and would receive appropriate consideration. Under such circumstances, we believe any doubt should be resolved in favor of the protester. Dictaphone Corporation, B-196512, September 17, 1980, 80-2 CPD 201. Moverover, timeliness is measured from the time the protester learns of an agency action or intended action which the protester believes is inimical to its interests. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66. That final action did not take place until the Air Force actually made award to McMillan based on the 34-month evaluation period

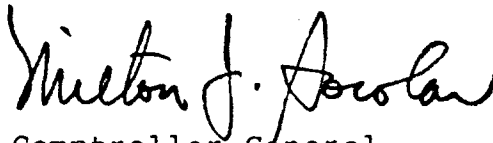
As the solicitation clearly stated that the evaluation would be based on the total price for the 34 months, the Air Force had no authority to base its evaluation on 33 months or on any other basis than that set forth in the IFB. Jacobs Transfer, Inc., 53 Comp. Gen. 797 (1974), 74-1 CPD 213; Refre and Associates, B-196097, April 25, 1980, 80-1 CPD 298, affirmed upon reconsideration July 7, 1980, 80-2 CPD 13. Therefore, when the Air Force found that unforeseen delays prevented start of performance until July 1, it was faced with the question as to whether it should solicit new bids or make an award for 33 months including the 3-month base period and 30-month option period.

The general rule is that an award must be made on the basis of the most favorable cost to the Government measured by the work actually to be performed and the evaluation should not include any period greater than that for which a contract

could be awarded. See Linolex Systems, Inc., et al., 53 Comp. Gen. 895 (1974), 74-1 CPD 296; Crown Laundry and Cleaners, B-196118, January 30, 1980, 80-1 CPD 82; Chemical Technology, Inc., B-187940, February 22, 1977, 77-1 CPD 126.

We have held, however, that this general rule does not have to be strictly applied to all cases. International Technical Services Corporation, B-198314, January 13, 1981, 81-1 CPD 18. Here, all competitors, including the protester, competed on the basis of 34 months, which was clearly required by the terms of the solicitation. The prices had been exposed and the difference in the prices was less than the probable cost to the agency of a resolicitation. Under these circumstances, we believe the agency acted reasonably in not following the general rule and making award under the original solicitation. International Technical Services Corporation, supra.

The protest is denied.

for 
Comptroller General
of the United States